

Article - Business Regulation

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§16-403.

(a) Any tobacco product manufacturer that sells cigarettes to consumers within the State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 1, 1999, shall either:

(1) become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(i) for 1999, \$.0094241 per unit sold after June 1, 1999;

(ii) for 2000, \$.0104712 per unit sold;

(iii) for each of 2001 and 2002, \$.0136125 per unit sold;

(iv) for each of 2003, 2004, 2005, and 2006, \$.0167539 per unit sold;

and

(v) for 2007 and each year thereafter, \$.0188482 per unit sold.

(b) (1) A tobacco product manufacturer that places funds into escrow in accordance with subsection (a)(2) of this section shall receive the interest or other appreciation on the funds as earned.

(2) The funds themselves shall be released from escrow only under the following circumstances:

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph:

1. in the order in which they were placed into escrow; and

2. only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement, including after final determination of all adjustments, that such manufacturer would have

been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco manufacturer; or

(iii) to the extent funds are not released from escrow under item (i) or (ii) of this paragraph, funds shall be released from escrow and revert to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) (1) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (a)(2) of this section shall annually certify to the Attorney General that it is in compliance with subsections (a)(2) and (b) of this section.

(2) The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section.

(3) (i) Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall be required within 15 days to place such funds into escrow as will bring the manufacturer into compliance with this section.

(ii) The court, upon a finding of a violation of subsection (a)(2) or (b) of this section, may impose a civil penalty, to be paid to the General Fund of the State:

1. in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation; and

2. in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.

(4) (i) If a tobacco product manufacturer has knowingly violated subsection (a)(2) or (b) of this section, the manufacturer shall be required within 15 days to place such funds into escrow as will bring it into compliance with this section.

(ii) Upon a finding of a knowing violation of subsection (a)(2) or (b) of this section, the court may impose a civil penalty, to be paid to the General Fund of the State:

1. in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation; and

2. in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.

(5) In the case of a second knowing violation of subsection (a)(2) or (b) of this section, the tobacco product manufacturer shall be prohibited from selling cigarettes to consumers within the State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, for a period not to exceed 2 years.

(6) Each failure to make the annual deposit required under this section shall constitute a separate violation.

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